

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STANLEY ROEHRIG, ET AL.,)	CIVIL NO. 05-00667 SPK/BMK
)	
Plaintiffs,)	
)	
vs.)	
)	
BLOSSOM TONG, ET AL.,)	
)	
Defendants.)	
_____)	

ORDER ADOPTING FINDINGS AND RECOMMENDATION TO DENY
PLAINTIFFS' MOTIONS FOR REMAND

Plaintiffs have filed objections pursuant to LR 74.1 and 28 U.S.C. § 636(b)(1) to the February 8, 2006, Findings and Recommendation of United States Magistrate Judge Barry M. Kurren to Deny Plaintiffs' Motions for Remand. Having reviewed the objections and responses under a de novo standard of review, the Court OVERRULES the objections and ADOPTS the Findings and Recommendation. The Motions to Remand are DENIED.

The law regarding fraudulent joinder is well-settled. The citizenship of a "fraudulently joined" defendant is ignored for purposes of determining diversity of citizenship. Fraudulent joinder is a term of art; if, according to the law of the forum state, a claim for personal liability is not possible and the failure to state a claim is obvious according to the settled law, then the joinder is "fraudulent."

Joinder of such a defendant may not destroy diversity of citizenship to prevent removal. See, e.g., Morris v. Princess Cruises, 236 F.3d 1061, 1067 (9th Cir. 2001); McCabe v. General Foods Corp., 811 F.2d 1336, 1339 (9th Cir. 1987).

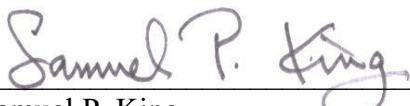
Upon review of the complaint and papers submitted, the Court agrees with Judge Kurren that Blossom Tong cannot be personally liable for the allegations in the complaint. The company (Seabury & Smith) has assumed or ratified responsibility for her acts, and she was at all times acting within the proper scope of her employment with the company. Under these circumstances, as an individual insurance agent, she cannot be individually liable. See, e.g., Moore v. Allstate, 6 Haw. App. 646, 736 P.2d 73 (1987). Ignoring her citizenship, diversity exists.

The Findings and Recommendation are ADOPTED. The Motions to Remand are DENIED.

IT IS SO ORDERED.

DATED: April 3, 2006





Samuel P. King
Senior United States District Judge